

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 482 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RANJANBEN ARVIND BAROT THROUGH POWER OF ATTORNEY HOLDER

Versus

MAHADEVBHAI KUVAJI AVTEK

Appearance:

MR SR BRAHMBHATT for Petitioners
MR PN BAVISHI for Respondent No. 1
NOS. 2 AND 3 served.

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 17/07/97

ORAL JUDGEMENT

1. This Civil Revision Application under Section 115 of the Code of Civil Procedure is filed by the owner-purchaser of the rented premises against respondent No.1-tenant, respondent No.2-original owner of the premises from whom the present petitioner has purchased and the Executive Engineer, Gujarat Electricity Board.

2. The petitioner is aggrieved by the judgment and order of the learned Second Extra Assistant Judge, District Court, Mehsana, passed on 18th February, 1993,

in Rent Revision Application No.4 of 1992, thereby confirming the order passed by the Trial Court.

3. The petitioner is the landlady, who has, admittedly, purchased the property from respondent No.2, being House No.4/4/129 and, according to her, when she purchased the house, respondent No.1-Mahadevbhai was already the tenant in the house in one room and a kitchen on the ground floor. Incidentally, it may be mentioned that respondent No.1, the tenant, had also filed Civil Revision Application No.22 of 1990 in the Court of Civil Judge (J.D.), at Kalol, for determining the standard rent, wherein it is alleged that he has admitted that from the beginning, the electricity charges were being paid by the tenant to the Gujarat Electricity Board. The case of the landlady that, as such, a very meagre amount was being paid to her towards the rent and when she herself was not occupying the premises and when the tenant has, in the standard rent application, admitted the liability to pay the electricity charges, no liability for payment of electricity charges can be fastened on her.

4. It appears that the tenant-Mahadevbhai, respondent No.1 herein, filed an application under Section 24 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for restoration of electricity connection, which came to be disconnected for non-payment of electricity bill. It was the case that with a view to harassing the landlady, electricity bills were not paid by the tenant and that the landlady has to pay such bills out of the meagre amount of rent. Such application came to be decided by the learned Civil Judge (J.D.), Kalol, on 30th September, 1992, who ordered that present petitioner, who was the purchaser of the premises should pay up the outstanding electricity bill to the Gujarat Electricity Board and on payment of such amount, the Gujarat Electricity Board should reconnect the electricity supply.

5. Being aggrieved thereby, Rent Revision Application No.4 of 1992 was preferred in the Court of Second Extra Assistant Judge, Mehsana, who dismissed the application, thereby confirming the judgment of the Trial Court and it is against such order that the present Civil Revision Application is filed.

6. It is pertinent to note that, under Section 24 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the said Act"), it is, inter alia, provided that a landlord shall not cut

off or withhold any essential supply or service enjoyed by the tenant, which obviously would include the supply of electricity. Under sub-section (2) of the said Section 24, a tenant is entitled, in case if the landlord has contravened the provisions of sub-section (1), to make an application to the Court for a direction to restore such supply or service. What is the procedure to be followed thereupon by the Court is provided in sub-section (3). It may also be stated that, in case of any dispute between the landlord and the tenant as to the liability to pay the electricity bills, the procedure is evolved under the terms of Gujarat Electricity Board and under clause (26) thereof, the parties are at liberty to approach the Board for deciding the liability to pay the electricity dues. In the present case, such a course is not adopted by the parties and, unfortunately, they have rushed to the Court.

7. It is pertinent to note that in the entire memo of Civil Revision Application as well as in the orders passed by the two Courts below, no murmur is made of the fact as to what is the amount due and payable by the occupant of the premises. Mr. S.R. Brahmbhatt, learned counsel appearing for the petitioner, is also not in a position to state to the Court as to what is the amount due and payable by his client to the Gujarat Electricity Board. In absence of any specific averment anywhere to be found as to what is the amount due and payable to Gujarat Electricity Board, even no via media could be found which would satisfy the liability towards Gujarat Electricity Board and the matter can be agitated under clause (26). In the application made under Section 24, all details are stated except the material detail as to what was the bill received and how much was the amount of bill required to be paid. Even the consumer number of electricity connection is also mentioned, but very intelligently it is avoided to mention the the amount of electricity charges due and payable under the bill issued by Gujarat Electricity Board. Unfortunately, Gujarat Electricity Board has not thought it fit to appear before this Court despite service of summons. It is in this situation that I am of the opinion that the primary liability under Section 24 to pay the electricity charges is that of the present petitioner and since such liability is not discharged, the Courts below were justified in passing the orders which they have passed. However, in the interest of justice, it is directed that, in case the present petitioner deposits half of the amount of the bill found due and payable, the Gujarat Electricity Board, respondent No.3 herein, shall accept the same and for the balance amount, adjudication shall

be made under clause (26) by the Electrical Inspector and on liability being fastened, the party who is liable to pay the amount shall pay up the amount within one month thereafter. If the aforesaid half amount is not paid within one month from today, there shall be no liability of the Gujarat Electricity Board to reconnect the electricity connection. In case the amount is deposited, the Gujarat Electricity Board shall proceed to adjudicate the liability under its appeal terms, more particularly clause (26) thereof and shall call upon the party who is liable to pay the bill of electricity charges within the stipulated time, within which the party shall pay up the amount so directed without any further dispute or without having recourse to any court of law whatsoever.

8. In the result, the Civil Revision Application is partly allowed to the aforesaid extent only. Rule 11 is partly made absolute on aforesaid terms only. There shall be no order as to costs.

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